

1 KEVIN V. RYAN (CASBN 118321)
2 United States Attorney

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Richard W. Moulden
Clerk, U.S. District Court
Northern District of California
San Jose

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13
14 v.

15 CONDOR SYSTEMS, INC.,
16 Defendant.
17

CR No. 03 20002

VIOLATIONS: 18 U.S.C. § 1001 – False
Statements to a Government Official

SAN JOSE VENUE

18
19 INFORMATION

20 The United States Attorney charges:

21 Introduction

22 1. At all times relevant to this Information:

23 a. Condor Systems, Inc. ("Condor") was a defense contractor, with its
24 principal place of business in San Jose, California. Condor specialized in the design and
25 manufacture of signal intelligence and electronic warfare systems and products. Condor
26 marketed its products both domestically, to branches of the United States government,

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1 and internationally.

2 b. Forsvarets Materielverk ("FMV") was the military procurement agency
3 for the government of Sweden. FMV was the principal contractor that manufactured the A-
4 17 submarine for the Swedish Navy;

5 c. Forsvarets Radioanstalt was the communications security agency for the
6 government of Sweden; and

7 d. Celsius Tech Naval Systems was a private Swedish contractor that was
8 manufacturing the Visby Corvette, a newly-developed class of surface vessel, for the
9 Swedish Navy.

10 Applicable Law

11 2. Section 38 of the Arms Export Control Act (the "AECA"), codified at Title 22,
12 United States Code, Section 2778, regulates the export from and import into the United
13 States of defense articles and services. In pertinent part, Section 2778 authorizes the
14 President of the United States to perform three functions:

- 15 (1) to designate those items which shall be considered as defense articles and
16 defense services (which will constitute the U.S. Munitions List);
17 (2) to require licenses for the export of such articles and services; and
18 (3) to promulgate regulations for the import and export of such articles and
19 services.

20 3. The State Department, Office of Defense Trade Controls ("ODTC"),
21 promulgates regulations under the AECA, which are known as the International Traffic in
22 Arms Regulations ("ITAR"), 22 C.F.R. §§ 120-130 (1999). The ITAR contain the Munitions
23 List, which sets forth twenty-one categories of defense articles and services that are subject
24 to export licensing controls. Unless an exemption applies, the ITAR require a valid export
25 license for the export of Munitions List articles and related technical data to all destinations.

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Background

4. In 1995, Condor, in conjunction with the U.S. Navy, developed a signal processor, Model SP-110, which would have Specific Emitter Identification (SEI) capability – namely, the ability to receive, process, and identify – i.e., “fingerprint” – specific radar emission sources. The contract’s security agreement stated that technical information on the SP-110 was not to be released without the written consent of the U.S. Navy.

5. In April 1996, Condor applied for a demonstration license to demonstrate a prototype of the CS-3701, a tactical microwave surveillance system, at a trade show in Stockholm, Sweden. The ODTC approved the license on June 10, 1996 as DTC Case T081017 (the “Demonstration License”). This license was issued with twelve “Limitations and Provisos,” which limited the scope of the license. Those limitations and provisos included the following numbered restrictions:

(4) Condor Systems must not offer or discuss automatic detection and identification of complex signals such as spread spectrum, LPI [short for “low probability of intercept”] and UMOP [short for “unintended modulation on pulse”].

(5) The capability to control a jammer must not be offered/discussed.

* * *

(12) Rubidium timing standard with the SP-103 must not be offered/discussed.

6. In November 1996, Condor received two Requests for Proposal from Sweden concerning two programs named by Condor as “Blue” and “Green.” The programs involved similar systems, one for a shipboard system (the “Green” program) and the other for a submarine system (the “Blue” program). In May 1997, Condor sent its proposal for the programs to Sweden.

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1 7. In the Green Executive Summary dated May 1997, Condor represented to
2 Sweden as follows:

3 "Condor was contracted [by the U.S. Navy] to
4 provide the follow-on systems known as *Cluster*
5 *Snoop* and *Cluster Robin*, which again provided
6 both ESM ["electronic surveillance measures"]
7 capability as well as advanced ELINT
8 ["electronic intelligence"] data collection. The
9 *Cluster Snoop* program uses the U.S. Navy's
10 latest JMCIS-compliant Windows - NT HM1."

11 "Cluster Snoop" and "Cluster Robin" are electronic intelligence programs developed by
12 Condor for exclusive use by the United States Navy.

13 8. In the Blue and Green Executive Summaries dated May 1997, Condor
14 represented to Sweden that the CS-3701 system was "fully compatible for upgrade to
15 include the MOP-based SEI processing." The United States prohibits the export of SEI
16 capability without government approval.

17 9. In a written communication to Sweden dated September 16, 1997, Condor
18 stated:

19 The prior proposals included a rubidium
20 frequency oscillator which allowed Condor to
21 propose a PRI measurement accuracy of 1 nsec
22 [nanosecond]. The specification only requires
23 10 nsec. The pricing associated with Option 24
24 [1 nsec PRI accuracy] is to add the rubidium
25 timing standard.

26 This reference to the rubidium timing standard was in violation of proviso 12 to the
Demonstration License.

 10. On May 21, 1998, Condor submitted an application for a "Technical
Assistance Agreement." This application sought government approval for the export of
the CS-3701 system to Sweden. At the time of this application, Condor had already
entered into a contract to export that system to Sweden. In a cover letter to this
application, addressed to the Office of Defense Trade Control, an agent of Condor made

1 certain false representations, as described in Counts One and Two of this Information.

2 11. On April 14, 1999, the United States refused to approve Condor's export
3 license, based on the following concerns:

4 (1) This proposed ESM system is comparable
5 to a unique state-of-the-art ESM system that the
6 U.S. Navy is developing for the USS Virginia
7 Class (NSSN) Submarines that will not deploy
8 until at least 2001. The software used with the
9 SP-110 is the same as that developed for the
10 U.S. Navy on the ASTECS and CLOISTER
11 [sic] ROBIN Programs.

12 (2) Additionally, this system has no threat data
13 protection scheme for in-country
14 reprogramming, so the end-user would have
15 complete access to the threat library. The end-
16 user country is not eligible for the level of threat
17 data required to populate the system. An
18 exception must be obtained by the SIGINT
19 [Signal Intelligence] committee.

20 12. The United States ultimately agreed to provide Sweden with a similar, but
21 less sophisticated system, pursuant to a Government-to-Government sale.

22 COUNT ONE: (18 U.S.C. § 1001 – False Statements to a Government Official)

23 13. Paragraphs 1 through 12 of this Information are realleged and incorporated
24 as if fully set forth here.

25 14. On or about May 21, 1998, in the Northern District of California, the
26 defendant,

CONDOR SYSTEMS, INC.,

21 did knowingly and willfully make materially false, fictitious, and fraudulent statements
22 and representations to the United States State Department, Office of Defense Trade
23 Controls, in a matter within the jurisdiction of the executive branch of the United States
24 government.

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26 INFORMATION

1 15. In particular, in a letter to the "Licensing Officer," Office of Defense Trade
2 Controls, the defendant made the following statements (emphasis added):

3 *The COTS [Commercial Off-the-Shelf] version*
4 *of the SP-110 uses current COTS software that*
5 *is adapted to the customer's interface*
6 *requirements and includes frequency agile*
7 *signal processing. These changes are being*
8 *made without consideration to the USN*
9 *Programs. In other words, they are being*
10 *developed in parallel and separately. A separate*
11 *version and Part Number has been assigned to*
12 *reflect this point.*

13 16. The italicized statement is false. In fact, as Condor well knew, the software
14 for the SP-110 signal processor was not "commercial off-the-shelf" software. The SP-
15 110 signal processor was developed by Condor in conjunction with the U.S. Navy
16 exclusively for use in United States Navy programs, and had not been approved by the
17 Navy as an "off-the-shelf" product.

18 All in violation of Title 18, United States Code, Section 1001.

19 COUNT TWO: (18 U.S.C. § 1001 – False Statements to a Government Official)

20 17. Paragraphs 1 through 12 of this Information are realleged and incorporated
21 as if fully set forth here.

22 18. On or about May 21, 1998, in the Northern District of California, the
23 defendant,

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6 *made without consideration to the USN*
7 *Programs. In other words, they are being*
8 *developed in parallel and separately. A*
9 *separate version and Part Number has been*
10 *assigned to reflect this point.*


11 The italicized statements are false. In fact, as Condor well knew, the software written for
12 both the U.S. Navy SP-110 signal processor and the SP-110 signal processor Condor had
13 contracted to sell to Sweden were based on identical code.

14 All in violation of Title 18, United States Code, Section 1001.

15 DATED: 1/8/03

16 KEVIN V. RYAN
17 United States Attorney

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19 ROSS W. NADEL
20 Chief, San Jose Branch Office

21 (Approved as to form: )

22 AUSA: Callaway

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